

1-1 By: Darby, et al. (Senate Sponsor - Fraser) H.B. No. 40
1-2 (In the Senate - Received from the House April 21, 2015;
1-3 April 23, 2015, read first time and referred to Committee on
1-4 Natural Resources and Economic Development; April 30, 2015,
1-5 reported favorably by the following vote: Yeas 9, Nays 0;
1-6 April 30, 2015, sent to printer.)

1-7 COMMITTEE VOTE

| 1-8 | Yea | Nay | Absent | PNV |
|------|-----------|-----|--------|-----|
| 1-9 | Fraser | X | | |
| 1-10 | Estes | X | | |
| 1-11 | Birdwell | X | | |
| 1-12 | Hall | X | | |
| 1-13 | Hancock | X | | |
| 1-14 | Hinojosa | | X | |
| 1-15 | Lucio | | X | |
| 1-16 | Nichols | X | | |
| 1-17 | Seliger | X | | |
| 1-18 | Uresti | X | | |
| 1-19 | Zaffirini | X | | |

1-20 A BILL TO BE ENTITLED
1-21 AN ACT

1-22 relating to the exclusive jurisdiction of this state to regulate
1-23 oil and gas operations in this state and the express preemption of
1-24 local regulation of those operations.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. The legislature finds that the laws and policy of
1-27 this state have fostered successful development of oil and gas
1-28 resources in concert with the growth of healthy and economically
1-29 vibrant communities for over 100 years. The legislature
1-30 acknowledges this cooperative progress and that mutual benefit is
1-31 derived from the statutes already in effect, which provide
1-32 effective and environmentally sound regulation of oil and gas
1-33 operations that is so comprehensive and pervasive that the
1-34 regulation occupies the field, while facilitating the overriding
1-35 policy objective of this state of fully and effectively exploiting
1-36 oil and gas resources while protecting the environment and the
1-37 public's health and safety. The legislature recognizes that in
1-38 order to continue this prosperity and the efficient management of a
1-39 key industry in this state, it is in the interest of this state to
1-40 explicitly confirm the authority to regulate oil and gas operations
1-41 in this state. The legislature intends that this Act expressly
1-42 preempt the regulation of oil and gas operations by municipalities
1-43 and other political subdivisions, which is impliedly preempted by
1-44 the statutes already in effect.

1-45 SECTION 2. Subchapter C, Chapter 81, Natural Resources
1-46 Code, is amended by adding Section 81.0523 to read as follows:

1-47 Sec. 81.0523. EXCLUSIVE JURISDICTION AND EXPRESS
1-48 PREEMPTION. (a) In this section:

1-49 (1) "Commercially reasonable" means a condition that
1-50 would allow a reasonably prudent operator to fully, effectively,
1-51 and economically exploit, develop, produce, process, and transport
1-52 oil and gas, as determined based on the objective standard of a
1-53 reasonably prudent operator and not on an individualized assessment
1-54 of an actual operator's capacity to act.

1-55 (2) "Oil and gas operation" means an activity
1-56 associated with the exploration, development, production,
1-57 processing, and transportation of oil and gas, including drilling,
1-58 hydraulic fracture stimulation, completion, maintenance,
1-59 reworking, recompletion, disposal, plugging and abandonment,
1-60 secondary and tertiary recovery, and remediation activities.

1-61 (b) An oil and gas operation is subject to the exclusive

jurisdiction of this state. Except as provided by Subsection (c), a municipality or other political subdivision may not enact or enforce an ordinance or other measure, or an amendment or revision of an ordinance or other measure, that bans, limits, or otherwise regulates an oil and gas operation within the boundaries or extraterritorial jurisdiction of the municipality or political subdivision.

(c) The authority of a municipality or other political subdivision to regulate an oil and gas operation is expressly preempted, except that a municipality may enact, amend, or enforce an ordinance or other measure that:

(1) regulates only aboveground activity related to an oil and gas operation that occurs at or above the surface of the ground, including a regulation governing fire and emergency response, traffic, lights, or noise, or imposing notice or reasonable setback requirements;

(2) is commercially reasonable;

(3) does not effectively prohibit an oil and gas operation conducted by a reasonably prudent operator; and

(4) is not otherwise preempted by state or federal law.

(d) An ordinance or other measure is considered prima facie to be commercially reasonable if the ordinance or other measure has been in effect for at least five years and has allowed the oil and gas operations at issue to continue during that period.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

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